13 May 2022

**DECISION**

**RACING VICTORIA**

**and**

**TONY NOONAN**

**Date of hearing:** 28 April 2022

**Panel:** Judge John Bowman (Chairperson) and Mr Robert Abrahams.

**Appearances:** Mr Scott Hunter and Mr Robert Cram appeared on behalf of the Stewards.

Mr Tony Noonan represented himself.

**Charge:** Australian Rule of Racing (“AR”) 240(2) states:

(2) Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.

**Particulars of charge:** 1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.

2. You are, and were at all relevant times, the trainer of “Toff Choice” (the Horse).

3. On 14 June 2021, the Horse was brought to the Mornington Racecourse and ran in Race 8, the Asset Painting Services BM70 Handicap over 1600 metres.

4. On 14 June 2021, a post-race urine sample was taken from the Horse (the Sample).

5. An analysis of the Sample detected the presence of Meloxicam.

6. Meloxicam is a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 (Prohibited list B) of the Australian Rules of Racing.

**Plea:** Guilty

**DECISION**

Mr Tony Noonan, you have pleaded guilty to a breach of Australian Rule of Racing (“AR”) 240(2) – what is frequently referred to as a presentation charge. It arises out of a post-race urine sample taken from “Toff Choice”, trained by you, after it was successful in Race 8 at Mornington on 14 June 2021. The sample proved positive to meloxicam.

Originally, how Toff Choice came to return a positive swab to meloxicam was something of a mystery. We accept that you have very comprehensive and strictly applied stable procedures. Your regular veterinary surgeon, Dr Marcus Valmadre, when interviewed, made this quite clear. However, upon reflection, you believe that an error may have been made by a staff member, the error being centred upon the horse having been scratched the week before and the effect upon the timetable of administration of the substance.

That very fair admission by you points to a potential error made by a staff member and a breakdown in your system.

We accept that you have been a licensed trainer for 37 years and you have an excellent record. Your only prior offence, if it could be categorised as that, occurred in New South Wales (“NSW”). The cause of the positive return on that occasion was accepted to be related to food poisoning and no penalty was recorded. We treat you as virtually having an unblemished record and being a careful and well-organised trainer.

We also make the following observations. Rules such as AR 240(2) impose strict, if not absolute, liability. Secondly, and related to that, and as pointed out by Mr Hunter on behalf of the Stewards, principles of general deterrence are of great importance. We accept that specific deterrence has no great role to play in the present, case given the circumstances and your excellent record. However, the importance of general deterrence must be emphasised. As stated, one such case was that involving Mr Kelvin Bourke, public confidence in the fairness and integrity of racing is of great importance. As was said in the recent case of Mr Danny O’Brien, when an error by staff had been the cause of an elevated “Bute” reading, the concepts of a level playing field and an industry free of illicit medications are vital to the well being of racing.

You have identified a possible staff error that may have been the cause of the elevated reading obtained from Toff Choice. You have effectively accepted responsibility for that error. The situation is not identical to that in the case of Mr Mitchell Freedman.

Bearing all of the above in mind, we are of the view that a penalty should be imposed. You are fined the sum of $1,500.

Further, Toff Choice is disqualified as the winner of Race 8 at Mornington on 14 June 2021 and the finishing order is amended accordingly.

Kathleen Scully
Acting Registrar, Victorian Racing Tribunal